

Press release issued by the Registrar

CHAMBER JUDGMENT IN THE CASE OF SADAK AND OTHERS v. TURKEY

The European Court of Human Rights has today notified in writing a judgment [fn] in the case of *Sadak and Others v. Turkey* (application nos. 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95). The Court held unanimously there had been **a violation of Article 3 to Protocol No. 1** (right to free elections) of the European Convention on Human Rights. Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 50,000 euros (EUR) each for damage. It also awarded EUR 10,500 for the costs and expenses of seven of the applicants and EUR 9,000 for the remaining six.

1. Principal facts

The applicants are thirteen Turkish nationals: Selim Sadak, who was born in 1954 at Şırnak, Sedat Yurttaş who was born in 1961 at Diyarbakır, Mehmet Hatip Dicle who was born in 1955 at Diyarbakır, Sırrı Sakık who was born in 1957 at Muş, Orhan Doğan who was born in 1955 at Mardin, Leyla Zana who was born in 1961 at Diyarbakır, Ahmet Türk who was born in 1942 at Mardin, Nizamettin Toguç who was born in 1951 at Siirt, Naif Güneş who was born in 1956 at Kurtalan-Siirt, Mahmut Kiliç who was born in 1946, Zübeyir Aydar who was born in 1961 at Siirt, Ali Yiğit who was born in 1959 at Nusaybin, and Remzi Kartal who was born in 1954 at Şırnak.

They were members of the Turkish Grand National Assembly and a political party, the *DEP* (the Democracy Party – *Demokrasi Partisi*). A few months after the *DEP* was formed in 1993, state counsel applied for an order for its dissolution, on the ground that it had infringed constitutional rules and the Law on Political Parties in that some of its members and its former chairman had made statements that were apt to undermine the integrity of the State and the unity of the nation. On 2 and 4 March 1994, five of the applicants who no longer enjoyed parliamentary immunity – Mr Dicle, Mr Doğan, followed by Mr Sakık, Mr Türk and Ms Zana – were arrested and taken into police custody as they left Parliament. On 16 June 1994 the Constitutional Court made an order dissolving the *DEP* and terminating the applicants' parliamentary mandates. Fearing prosecution, some of the applicants fled overseas; Mr Sadak and Mr Yurttaş voluntarily surrendered to custody at the offices of state counsel.

The applicants were accused of separatism and undermining the integrity of the State. Some of the applicants were convicted on 8 December 1994 by the Ankara National Security Court under the Prevention of Terrorism Act. Mr Sakık was sentenced to three years' imprisonment for separatist propaganda, Mr Türk, Mr Dicle, Mr Doğan, Mr Sadak and Ms Zana to 15 years' imprisonment for being members of an armed gang and Mr Yurttaş to seven and a half years' imprisonment for aiding and abetting an armed gang. On 26 October 1995 the Court of Cassation quashed the convictions of Mr Türk and Mr Yurttaş and ordered their provisional release. However, it upheld the other applicants' convictions.

2. Procedure and composition of the Court

The applications were lodged with the European Commission of Human Rights on 23 August and 16 December 1994. They were joined on 22 May 1995 and transferred to the Court on 1 November 1998. On 30 May 2000 the Court declared the applications admissible, with the exception of application no. 25144/94, which it declared admissible as regards the complaint under Article 5 (right to liberty and security) of the Convention only.

Judgment was given by a Chamber of seven judges, composed as follows:

Nicolas **Bratza** (British), *President*
Antonio **Pastor Ridruejo** (Spanish),
Jerzy **Makarczyk** (Polish),
Riza **Türmen** (Turkish),
Viera **Strážnická** (Slovakian),
Matti **Pellonpää** (Finnish),
Stanislav **Pavlovschi** (Moldovan), *judges*,

and also Michael **O'Boyle**, *Section Registrar*.

3. Summary of the judgment

Complaints

The applicants complained that they had been deprived of their parliamentary mandates following the dissolution of the *DEP*. They alleged a violation of Article 7 (no punishment without law), Article 9 (freedom of thought), Article 10 (freedom of expression) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights. They also complained of an infringement of their right to freedom of association, as guaranteed by Article 11, and maintained that the loss of their parliamentary emoluments constituted a breach of their right to the peaceful enjoyment of their possessions, contrary to Article 1 of Protocol No 1. Lastly, they alleged that they had been denied a fair trial, contrary to Article 6 § 1.

By a decision of 30 May 2000, the European Court of Human Rights ruled that the applications should also be examined under Article 3 of Protocol No. 1.

Decision of the Court

Article 3 of Protocol No. 1

The Court reiterated that Article 3 of Protocol No. 1 enshrined a characteristic of an effective political democracy and played a major role in the Convention system. It noted that in the case before it the applicants had been automatically deprived of their parliamentary mandates following the dissolution of the *DEP* by the Constitutional Court for comments made abroad by the former chairman of the party and a written statement issued by its central committee. That penalty had not been imposed as a result of the applicants' political activities as individuals, but had been an automatic consequence of the dissolution of the party of which they were members. The Court further noted that since a constitutional amendment in 1995, only members of parliament whose words or deeds had caused the dissolution of a party lost their parliamentary mandates. It considered that the measure concerned, namely the final dissolution of the *DEP* with immediate effect and the ban that prevented party members from exercising their mandate or carrying on political activities was an extremely harsh penalty.

The Court held that the penalty imposed on the applicants could not be regarded as proportionate to the legitimate aim relied on by Turkey, that the measure was incompatible with the very essence of the right to stand for election and to hold parliamentary office and that it had infringed the unfettered discretion of the electorate which had elected the applicants. It therefore held that there had been a violation of Article 3 of Protocol No. 1.

Articles 7, 9, 10, 11 and 14 and 6 § 1

In the light of its finding in respect of Article 3 of Protocol No. 1, the Court held that it was unnecessary to examine this complaint separately.

Article 1 of Protocol No. 1

Finding that the measures were incidental effects of the applicants' loss of their parliamentary office, the Court held that it was unnecessary to examine this complaint separately.

Article 41

The Court awarded each of the applicants EUR 50,000 for damage. As regards costs and expenses, it awarded a total of EUR 10,500 to Mr Sadak, Ms Zana, Mr Dicle, Mr Doğan, Mr Türk, Mr Sakık and Mr Yurttas and the remaining six applicants a total of EUR 9,000.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Registry of the European Court of Human Rights

F – 67075 Strasbourg Cedex

Contacts: Roderick Liddell (telephone: (0)3 88 41 24 92)

Emma Hellyer (telephone: (0)3 90 21 42 15)

Fax: (0)3 88 41 27 91

The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.

[fn] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.